

Message Text

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C O N F I D E N T I A L SAN JOSE 5983

E.O. 11652: GDS
TAGS: PFOR, CS
SUBJECT: VESCO EXTRADITION

REF: STATE 299452 AND 298612

1. EMBOFF HAS MET WITH RECHNITZER'S LAWYER AND WITH LAWYER FOR ONE GROUP OF LIQUIDATORS TO DISCUSS RECHNITZER CASE AND ITS POSSIBLE IMPACT ON EXTRADITION (ORTIZ CONTINUES TO BE OUT OF THE COUNTRY). WHILE EACH PRESENTS HIS OWN INTERPRETATION OF HOW THINGS COULD DEVELOP, SOME USEFUL INFORMATION

HAS BEEN GLEANED.

2. ACCORDING TO RECHNITZER'S LAWYER, RECHNITZER'S CHARGES AGAINST VESCO CENTER ON INTER-AMERICAN CAPITAL CASE BUT INVOLVE ALL REPEAT ALL NINE COUNTS OF JANUARY 1975 INDICTMENT. THE CHARGE IS "ADMINISTRACION FRAUDULENTA Y FRAUDE" (FRAUDULENT ADMINISTRATION AND FRAUD).

3. THE DOCUMENTS SPECIFYING RECHNITZER'S CHARGES, ACCORDING TO RECHNITZER'S LAWYER, ARE CONSIDERED CONFIDENTIAL BY THE SECOND JUDGE OF INSTRUCTION. THUS THE JUDGE OF INSTRUCTION, WHOSE FUNCTION (LIKE A GRAND JURY'S) IS TO DETERMINE WHETHER (A) A CRIME HAS BEEN COMMITTED AND (B) WHETHER SUFFICIENT EVIDENCE EXISTS TO BRING TO
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TRIAL THE PERSON (S) ACCUSED OF THIS CRIME, HAS DECIDED TO RETAIN THIS DOCUMENT - THE BASIS FOR THE INVESTIGATION HE IS CARRYING OUT - IN CAMARA (OF COURSE RECHNITZER AND HIS LAWYERS HAVE THE DOCUMENTS). ACCORDING TO RECHNITZER'S LAWYER, NOT EVEN THE ACCUSED (AT LEAST IN THEORY) ARE ALLOWED ACCESS TO IT. BOTH RECHNITZER'S

LAWYER AND THE LIQUIDATORS' LAWYER BELIEVE THE JUDGE IS IN ERROR IN HIS RULING, AND SAY THAT THEY WILL ATTEMPT TO GET HIM TO ALLOW THESE DOCUMENTS TO BE MADE AVAILABLE TO INTERESTED PARTIES, (SUCH AS LIQUIDATORS) WHO HAVE A LEGITIMATE INTEREST IN RECHNITZER'S CHARGES. BOTH RECHNITZER'S LAWYER AND THE LAWYER FOR THE LIQUIDATORS HAVE PROMISED SEPARATELY TO PROVIDE EMBASSY WITH COPY WHEN JUDGE SO PERMITS.

4. RECHNITZER'S LAWYER HAS VOLUNTEERED THE FOLLOWING COMMENTARY ON THE RELATIONSHIP OF HIS CLIENT'S CASE WITH A U.S. EXTRADITION ATTEMPT: A KEY ELEMENT IN THE "DOUBLE JEOPARDY" ASPECT OF THIS CASE IS THE DEFINITION OF "THE SAME FACTS" AS MENTIONED IN ARTICLE 3B OF THE 1976 EXTRADITION LAW. THE LAWYER NOTES THAT IN THE ACCOMPANYING LEGISLATIVE DEBATE, ONE OF THE AUTHORS OF THE LAW STATED THAT "THE SAME FACTS" IS DEFINED AS "IDENTITY OF PARTS, OBJECT, AND CAUSE." IF ALL THREE ARE THE SAME, EXTRADITION WOULD NOT BE POSSIBLE. HOWEVER, IF ONE OF THE PARTS IS DIFFERENT (E.G. THE VICTIMS OF THE ALLEGED FRAUD), THEN THE FACTS ARE NOT THE SAME, AND EXTRADITION WOULD BE POSSIBLE. LAWYER ALSO NOTES THAT THERE IS NO GUARANTEE THAT A COURT WILL MAINTAIN THIS INTERPRETATION OF "THE SAME FACTS."

5. THE LIQUIDATORS' LAWYER OPINED ON THE RECHNITZER CASE IN TERMS OF WHERE THE ACT WAS COMMITTED, HOLDING THAT TRIBUNAL, IF IT GETS THE CASE, WILL THROW IT OUT BECAUSE ALLEGED FRAUD WAS NOT COMMITTED IN COSTA RICA. RECHNITZER'S LAWYER DOES NOT SHARE THIS VIEW;
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HE HOLDS THAT FRAUD WAS NOT ONLY COMMITTED IN COSTA RICA, BUT IS ONGOING.

6. EMBASSY WILL BRING THESE COMMENTS TO ORTIZ' ATTENTION AS SOON AS HE GETS BACK TO COSTA RICA AND TO HIS OFFICE. IN VIEW OF DELICATE NATURE OF STATUS OF RECHNITYKU'S ACCUSATION WITH SECOND JUDGE OF INSTRUCTION, WE PLAN NOT TO PRESS ANY MORE THAN WE HAVE IN THE MATTER OF OBTAINING A COPY OF RECHNITZER'S CHARGES BEFORE THE COURT OF INSTRUCTION.

7. STATE OF CASE: RECHNITZER'S LAWYER SAYS THAT CASE HAS NOT MOVED FROM FIRST STAGE OF CALLING WITNESSES TO BE INTERROGATED (INDAGATORIA PRELIMINAR). THIS STAGE COULD DRAG OUT FOR WEEKS; SOME TEN PERSONS HAVE TO BE CALLED. ALSO, JUDGE HAS REQUESTED DOCUMENTS FROM U.S. WHICH HAVE NOT YET ARRIVED. LAWYER SAYS THAT UNTIL JUDGE RECEIVES THESE

DOCUMENTS, HE WILL HOLD UP SUMMONING WITNESSES.

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